

Statutory Appendix

I. ESCH-CUMMINGS ACT (Transportation Act of 1920)

TITLE IV — AMENDMENTS TO INTERSTATE COMMERCE ACT

SEC. 400. The first four paragraphs of section 1 of the Interstate Commerce Act, as such paragraphs appear in section 7 of the Commerce Court Act, are hereby amended to read as follows:

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“(1) That the provisions of this Act shall apply to common carriers engaged in —

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“(c) The transmission of intelligence by wire or wireless; — from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States.

“(2) The provisions of this Act shall so apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply —

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“(b) To the transmission of intelligence by wire or wireless wholly within one State and not transmitted to or from a foreign country from or to any place in the United States as aforesaid;

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“(3) The term ‘common carrier’ as used in this Act shall include all pipe-line companies, telegraph, telephone, and cable companies operating by wire or wireless: Wherever the word ‘carrier’ is used in this Act it shall be held to mean ‘common carrier.’ . . . The term ‘transmission’ as used in this Act shall include the transmission of intelligence through the application of electrical energy or other

Appendix I

use of electricity, whether by means of wire, cable, radio apparatus, or other wire or wireless conductors or appliances, and all instrumentalities and facilities for and services in connection with the receipt, forwarding, and delivery of messages, communications, or other intelligence so transmitted, hereinafter also collectively called messages. ***"

(41 Stat. 474-75.)

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SEC. 435. The fifth paragraph of section 20 of the Interstate Commerce Act is hereby amended to read as follows:

"(5) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. The Commission shall, as soon as practicable, prescribe, for carriers subject to this Act, the classes of property for which depreciation charges may properly be included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. The carriers subject to this Act shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses. The Commission shall at all times have access to all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by carriers subject to this Act, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply

Appendix I

thereto, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers. This provision shall apply to receivers of carriers and operating trustees. The provisions of this section shall also apply to all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, kept during the period of Federal control, and placed by the President in the custody of carriers subject to this Act."

(41 Stat. 493-94.)

II. COMMUNICATIONS ACT OF 1934

P.L. 416 (73d Cong., 2d Sess.)

APPLICATION OF ACT

SEC. 2. (a) The provisions of this Act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Philippine Islands or the Canal Zone, or to wire or radio communication or transmission wholly within the Philippine Islands or the Canal Zone.

(b) Subject to the provisions of section 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect

Appendix I

common control with, such carrier; except that sections 201 to 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clause (2).

(48 Stat. 1064.)

U.S. Code, Title 47: Telegraphs, Telephones, and Radiotelegraphs.

TITLE I — General Provisions

§ 151. Purposes of Act, Creation of Federal Communications Commission

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

(June 19, 1934, ch 652, Title I, § 1, 48 Stat. 1064; May 20, 1937, ch 229, § 1, 50 Stat. 189.)

§ 152. Application of the Act

(a) The provisions of this Act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not

Appendix I

apply to persons engaged in wire or radio communication or transmission in [the Philippine Islands or] the Canal Zone, or to wire or radio communication or transmission wholly within [the Philippine Islands or] the Canal Zone. The provisions of this Act shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in title VI.

(b) Except as provided in section 224 and subject to the provisions of section 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

(June 19, 1934, ch 652, Title I, § 2, 48 Stat. 1064; Apr. 27, 1954, ch 175, § 1, 68 Stat. 63; Feb. 21, 1978, P. L. 95-234, § 5, 92 Stat. 35; Oct. 30, 1984, P.L. 98-549, § 3(a)(1), (2), 98 Stat. 2801.)

§ 153. Definitions

For the purposes of this Act, unless the context otherwise requires —

Appendix I

(a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(b) "Radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

* * *

(c) "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not, with respect to the provisions of title II of this Act (other than section 223 thereof), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

* * *

(June 19, 1934, ch. 652, Title I, § 3, 48 Stat. 1065; Apr. 27, 1954, ch. 175, §§ 2, 3, 68 Stat. 64; May 3, 1968, P. L. 90-299, § 2, 82 Stat. 112.)

Appendix I

TITLE II — Common Carriers

* * *

§ 220. Accounts, Records, And Memoranda; Depreciation Charges

(a) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

(b) The Commission shall, as soon as practicable, prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not, after the Commission has prescribed the classes [classes] of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or, after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

(c) The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be

Appendix I

on the person making, authorizing, or requiring such entry and the Commission may suspend a charge or credit pending submission of proof by such person. Any provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section.

(d) In case of failure or refusal on the part of any such carrier to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, memoranda, documents, papers, and correspondence as are kept to the inspection of the Commission or any of its authorized agents, such carrier shall forfeit to the United States the sum of \$500 for each day of the continuance of each such offense.

(e) Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by any such carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than \$1,000 nor more than \$5,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, or documents which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

* * *

(g) After the Commission has prescribed the forms and manner of keeping of accounts, records, or memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as

Appendix I

may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect.

(h) The Commission may classify carriers subject to this Act and prescribe different requirements under this section for different classes of carriers, and may, if it deemed such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(i) The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

(j) The Commission shall investigate and report to Congress as to the need for legislation to define further or harmonize the powers of the Commission and of State commissions with respect to matters to which this section relates.

(June 19, 1934, ch 652, Title II, § 220, 48 Stat. 1078.)

§ 221. Special Provisions Relating to Telephone Companies

* * *

(b) Subject to the provisions of section 301, nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

Appendix I

(c) For the purpose administering this Act as to carriers engaged in wire telephone communication, the Commission may classify the property of any such carrier used for wire telephone communication, and determine what property of said carrier shall be considered as used in interstate or foreign telephone toll service. Such classification shall be made after hearing, upon notice to the carrier, the State commission (or the Governor, if the State has no State commission) of any State in which the property of said carrier is located, and such other persons as the commission may prescribe.

* * *

(June 19, 1934, ch 652, Title II, § 221, 48 Stat. 1080; Apr. 27, 1954, ch 175, § 4, 68 Stat. 64.)

§ 604 [47 U.S.C. § 704]. Effect of Transfers, Repeals and Amendments

(a) All orders, determinations, rules, regulations, permits, contracts, licenses, and privileges which have been issued, made, or granted by the Interstate Commerce Commission, the Federal Radio Commission, or the Postmaster General, under any provision of law repealed or amended by this Act or in the exercise of duties, powers, or functions transferred to the Commission by this Act, and which are in effect at the time this section takes effect, shall continue in effect until modified, terminated, superseded, or repealed by the Commission or by operation of law.

(b) Any proceeding, hearing, or investigation commenced or pending before the Federal Radio Commission, the Interstate Commerce Commission, or the Postmaster General, at the time of the organization of the Commission, shall be continued by the Commission in the same manner as though originally commenced before the Commission, if such proceeding, hearing, or investigation (1) involves the administration of duties, powers, and functions transferred to the Commission by this Act, or (2) involves the exercise of jurisdiction similar to that granted to the Commission under the provisions of this Act.

(c) All records transferred to the Commission under this Act shall be available for use by the Commission to

Appendix I

the same extent as if such records were originally records of the Commission. All final valuations and determinations of depreciation charges by the Interstate Commerce Commission with respect to common carriers engaged in radio or wire communication, and all orders of the Interstate Commerce Commission with respect to such valuations and determinations, shall have the same force and effect as though made by the Commission under this Act.

(June 19, 1934, ch 652, Title VII[VI], § 704[604], 48 Stat. 1103; Oct. 30, 1984, P. L. 98-549, § 6(a), 98 Stat. 2804.)

APPENDIX II

LEGISLATIVE CHRONOLOGY OF SECTIONS 2(b) AND 220 OF THE COMMUNICATIONS ACT OF 1934 AND THEIR ANTECEDENTS

This appendix traces chronologically from their inceptions the evolution of the Section 2(b)(1) exemption and the depreciation provisions of the 1934 Act.

- 6/18/10 The Mann-Elkins Act, 36 Stat. 539, 544-45, 555, amended Section 1 of the Interstate Commerce Act of 1887 to make it applicable to all telephone companies, subject to the proviso that the act should not apply to intrastate transmissions.
- 1/1/13 The ICC's "Uniform System of Accounts for Telephone Companies," became effective, requiring telephone companies to include depreciation charges in operating expenses under authority of Section 20(5) of the act, as added in the Hepburn Act of 1906, 34 Stat. 584, 595.
- 6/8/14 The Court held in the *Shreveport Rate Case* that the intrastate proviso in Section 1 did not prevent the ICC from ordering intrastate rates raised to eliminate discrimination against interstate commerce.
- 1919,
1922-27 NARUC's annual meetings in 1919 and 1922-27 passed resolutions urging Congress to restrict ICC jurisdiction over telephone companies to primarily interstate commerce.
- 2/28/20 The Esch-Cummings Act (Transportation Act of 1920), 41 Stat. 456, amended Section 20(5) to require the ICC to establish, and the carriers to comply with, schedules of depreciation for all classes of property. It also amended the form of Section 1 of the act to make the act applicable to telephone companies engaged in interstate transmission, but provided that the

Appendix II

act should not apply to intrastate transmissions. Finally, Congress added provisions in Section 13 of the act permitting the ICC to consult with, or hold joint hearings with, state commissions on *Shreveport* cases.

- 12/6/23 NARUC's annual convention adopted the following resolution on the jurisdiction given the ICC by the Esch-Cummings Act:

RESOLUTION RELATING TO TELEPHONE DEPRECIATION

Be It Resolved by this Association, that the Committee on State and Federal Legislation be instructed to take such action as may be required to secure the amendment of the Interstate Commerce Act so that the jurisdiction to fix the depreciation charges, by telephone companies, shall clearly rest with the various state commissions, as it did prior to the enactment of the Transportation Act of 1920.

NARUC: 1923 Proceedings at 302; printed in 1934 Senate Hearings at 184.

- 4/18/29 Sen. Couzens (R-Mich.) introduced S. 6 to establish a commission on communications, largely carrying over the provisions of Sections 1, 13, and 20(5) of the Commerce Act.
- 8/29/29 NARUC's annual convention adopted a resolution opposing enactment of S. 6. 1929 Proceedings at 423.
- 1/30/30 At Hearings on S. 6 before the Senate Commerce Committee, Walter S. Gifford, President of AT&T, testified in pertinent part:

Appendix II

Let us take the present situation. The Interstate Commerce Commission is supposed to regulate only interstate business. As a matter of fact. . . the present regulation is such that all the accounts of all of our companies are kept in accordance with Federal regulations laid down by the Interstate Commerce Commission. Our records are destroyed according to the regulations laid down by the Interstate Commerce Commission. The Interstate Commerce Commission is engaged in fixing our rates of depreciation.

Loc. cit. at 1990; *cf. id.* at 2027, 2029-30, 2051; testimony of F. B. MacKinnon, President of USITA, at 2119; testimony of Charles C. Dearing, Secretary of USITA, at 2139-40 (2/3/30).

2/5/30

Later in the Senate hearings, John E. Benton, General Solicitor of NARUC, recited NARUC's opposition to the depreciation provisions of the Esch-Cummings Act, starting with the 1923 resolution, and presented similar resolutions from thirty-seven states. *Loc. cit.* at 2215, 2224-31, 2170, 2168, 2178, 2222-23, 2232-85. The ICC's exercise of its authority under the 1920 amendments to Section 20 of the Interstate Commerce Act, he said, "would result in the practical destruction of State regulatory powers." *Id.* at 2179.

Appendix II

4/23/30 A confidential committee print of the redrafted Couzens bill, S. 6, contained in Section 1 (Application of the Act) the language which became Section 2(a) of the 1934 Act through the second "to" clause, but added in Section 65 (Investigations and Orders as to Rates and Practices) paragraph (d) withholding from the new commission the authority to regulate intrastate rates, "whether for the purpose of removing discrimination against interstate commerce or for any other purpose." Section 69(b) of the bill tracked Section 20(5) of the Commerce Act, and Section 110 directed the ICC to complete "the determination of percentages of depreciation charges" for all telephone companies.

2/26/34 At Senator Dill's request, President Roosevelt sent to Congress a message calling for the consolidation of Federal authority over communications in a new commission. S. Doc. No. 144 (73d Cong., 2d Sess.); 78 *Cong. Rec.* 3259.

2/27/34 Companion bills, S. 2910 and H.R. 8301, were introduced in the Senate and House by Senator Dill and Congressman Rayburn, respectively, "centralizing authority heretofore granted by law to several agencies and . . . granting additional authority" in and to the FCC (§ 1). Section 2 (Application of Act) tracks Section 1 from the revised Couzens bill. Both bills contained the following exclusion, adapted from Section 1(2) of the Commerce act as amended in 1920:

ACT NOT TO APPLY TO COMMUNICATION IN INTRASTATE COMMERCE

Sec. 210. Nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, or regulations for or in connection with intrastate communication service of any carrier, or to any carrier engaged exclusively in intrastate commerce.

Appendix II

Both bills contained the language on accounting and depreciation from Section 20(5) of the Commerce act and in addition three paragraphs (h), (i) and (j), proposed by the state commissions. Paragraphs (h) and (i) were essentially as enacted in 1934. Paragraph (j) read as follows:

(j) Nothing in this section shall (1) limit the power of a State commission to prescribe, for the purposes of the exercise of its jurisdiction with respect to any carrier, the percentage rate of depreciation to be charged to any class of property of such carrier, or the composite depreciation rate, for the purpose of determining charges, accounts, records, or practices; or (2) relieve any carrier from keeping any accounts, records, or memoranda which may be required to be kept by any State commission in pursuance of authority granted under State law.

March,
1934

At the Senate hearings on S. 2910, President Gifford of AT&T attacked paragraphs (h), (i), and (j) as inconsistent with existing practice under Section 20(5) of the Commerce Act, *loc. cit.* at 95-96, as did USITA's President MacKinnon. *Id.* at 139-40.

The following day NARUC's witness, Kit F. Clardy of the Michigan commission, characterized the language of those paragraphs as having been worked out by the State commissions to prevent them from being "entirely ousted from their jurisdiction" by *Shreveport*. *Loc. cit.* at 154-55.

The succeeding day NARUC Solicitor Benton, acknowledging that the "ICC has had power over depreciation since 1920", *id.* at 181, attributed the addition of paragraphs (h)-(j) to "representations which were made by State Commission representatives." *Id.* at 180. On this point, the following colloquy between Senator Dill, presiding, and Senator Long (D-La.) confirmed Benton's statement as to origin:

Appendix II

The Chairman. I may say, Senator Long, that at the request of the State commission representatives, we wrote in certain provisions that are not in the Interstate Commerce Act, to protect the State commissions against being overridden by this Commission, as the Interstate Commission has overridden some of the railroad State commissions.

Senator Long. We do not want to give them what they call the right to slip in on the ground of intrastate discriminations against interstate business.

The Chairman. Protection against the Shreveport decision.

Senator Long. Yes.

Id. at 179. "There ought not be", Benton testified, "a transfer to the new commission of the exact powers which the Interstate Commerce Commission now possesses over telephone companies." *Id.* at 180.

The next day in a letter to Senator Dill, ICC Commissioner McManamy cautioned with respect to paragraphs (h)-(j):

The last three paragraphs are new.

Paragraph (j) of these new paragraphs should be most carefully considered. It unquestionably directly conflicts with, and destroys the uniformity of systems of accounts and depreciation accounting required by the preceding provisions of the section. That is not true under the present law. In this connection consideration should also be given to the last 4 lines of paragraph (h).

Id. at 208; printed also in House hearings on H.R. 8301, May 8, 1934, at 96.

Appendix II

4/4/34 Senator Dill introduced a clean bill, S. 3285, which transposed the Section 210 language of S. 2910 and H.R. 8301 to Section 2(b) and amended paragraphs (h) and (j) of Section 220 to read as follows:

(h) The Commission may classify carriers subject to this Act and prescribe different requirements under this section for different classes of carriers.

* * *

(j) The Commission shall investigate and report to the Congress whether in its opinion legislation is desirable (1) authorizing the Commission to except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates; and (2) permitting the State commissions, in pursuance of authority granted under State law, to prescribe their own percentage rates of depreciation or systems of accounts, records, or memoranda to be kept by carriers.

4/10/34 Dr. Irwin Stewart, a member of the Interdepartmental Committee on Communications whose report underlay President Roosevelt's message to Congress calling for communications legislation, testified before the House committee:

Section 220, I believe, will also be the subject of considerable discussion before your committee. The first paragraphs, that is, through paragraph (g), are taken from the Interstate Commerce Act, which give to the Interstate Commerce Commission the right to prescribe uniform accounting, to fix depreciation charges, and makes those provisions the only provisions on the subject. That is, it takes away any jurisdiction that the State may have had.

Appendix II

...[P]aragraphs (h), (i), and (j), are new material which would leave to the State commissions certain authority over the subject matter.

Loc. cit. at 17.

4/11/34 At the House hearings on H.R. 8301 NARUC's lead-off witness, Kit F. Clardy, acknowledged that under the Commerce Act

if the present power now given to the Interstate Commerce Commission should be exercised up to the hilt, we would not only be Shreveported out of control, but we would be checked and double-checked. We would be right out of the [telephone and telegraph] field entirely.

Loc. cit. at 74. Attacking the redrafting in S. 3285 as "perhaps result[ing] in the crippling of State regulation of accounts and depreciation in a very vital way", Clardy asserted: "[I]t substantially cuts us from our jurisdiction." *Id.* at 70, 73.

5/9/34 Later in the same hearings, NARUC Solicitor Benton conceded that

The Interstate Commerce Commission has the same power now to override State regulation in the telephone field as it has in the railroad field....

Op. cit. at 135-36. The House bill as drafted, he said, "removes provisions of the law which are now existent" depriving the State commissions of authority over such matters as depreciation. *Id.* at 139. Pointing specifically to the differences between the paragraphs (h) and (j) of H.R. 8301 and S. 3285, Benton said:

Appendix II

I assume that the committee which drafted this bill had that redraft [of S. 6 (71st Cong., 1st Sess.)]. Certain provisions which were in it have been carried into this bill. The State commissions were also permitted to file a brief in that connection, and that undoubtedly was considered in the preparation of this bill, H.R. 8301, which is before this committee. This bill has been drafted to safeguard State powers and to leave State commissions power to regulate intrastate business unhampered.

The Senate redraft, however, seems to have shown response to a very vigorous attack made upon the accounting sections by President Gifford before the Senate committee.

Id. at 140.

NARUC suggested two amendments to Subsections (a) and (b) of Section 220 of H.R. 8301 "to avoid conflict" between each of those subsections and Subsection (j). The first amendment would have removed the phrase "any and all" from Subsection (a), and the second would have restricted the binding effect of the FCC's depreciation prescriptions to "the accounts prescribed by the Commission." *Id.* at 144. (Although both of these suggested amendments were reported by the House committee, neither they nor NARUC's Subsection (j) survived conference.)

4/19/34 S. 3285 was reported by the Senate Committee with no further amendments to Sections 2(b) and 220(b) and (h)-(j). The Senate Report to accompany S. 3285 stated:

Appendix II

Section 220 (a-g) is taken from section 20 (5-8) of the Interstate Commerce Act dealing with accounts, records, and memoranda. It also adds the new provisions found in subsections (h), (i), and (j). Subsections (h) and (i) reflect the present practice of the Interstate Commerce Commission. Subsection (j) is responsive to the recommendations of the State public utilities commissions, except that it calls for investigation and report to Congress instead of immediately turning over these matters to the State.

Loc. cit. at 5. The report also noted that under Section 220 the new commission was directed to investigate the "desirability of permitting State regulation of . . . rates of depreciation charges . . ." *Id.* at 2.

5/10/34 Upon resumption of the House hearings, Gifford of AT&T repeated his Senate testimony critical of provisions of H.R. 8301 that would change the current law and practice with respect to uniform accounting and depreciation systems. Asked by Congressman Mapes (R-Mich.) whether the States required AT&T "to keep accounts of any kind," Gifford replied: "No. The present law, the interstate commerce law, calls for accounts and that controls, as against the State laws." *Loc. cit.* at 192. MacKinnon of USITA again testified in favor of uniform accounting, depreciation, and valuation. *Id.* at 240-46.

5/15/34 S. 3285 was passed by the Senate. Section 2(b) was amended on the floor on motion of Senator (later Judge) "Champ" Clark (D-Missouri) to further protect the small Independents, by deleting "wire" and revising the final clause to read:

Appendix II

or to any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by such carrier, or under direct or indirect control with such other carrier.

78 Cong. Rec. 8846.

6/1/34 S. 3285, as unanimously reported by the House Commerce Committee, essentially substituted H.R. 8301 for S. 3285, amending Section 2(b) to reference Sections 301 and 201-05 and reverting to the original language of Section 220(h)-(j) in S. 2910 and H.R. 8301, as introduced.

The House report (H. Rpt. No. 1850) contains the following explanation:

(2) The Senate bill includes an amendment adopted on the floor of the Senate exempting carriers engaged in interstate or foreign communication solely through physical connection with the facilities of a nonaffiliated carrier. The amendment retains this provision except that it makes such carriers subject to sections 201 and 205, providing for regulation of charges and prohibiting discriminations. Such carriers will not, however, be required to file schedules of charges. [p. 2]

* * *

Section 2 makes the bill applicable to all interstate and foreign communication by wire or radio, except that independent telephone companies engaged in interstate or foreign communication only through physical connections with another nonaffiliated carrier are subjected only to certain sections of the act designed to insure reasonableness of rates and no discrimination in service. The bill also exempts the intrastate business of any carrier. [p. 4]

Appendix II

* * *

Section 220 (a-g) is taken from section 20 (5-8) of the Interstate Commerce Act dealing with accounts, records, and memoranda. It also adds the new provisions found in subsections (h), (i), and (j). Subsections (h), (i), and (j) are responsive to the requests of the State commissions that the present law be changed so as to permit those bodies to exercise, for State purposes, certain jurisdiction over accounting systems and methods of depreciation accounting. [p. 7]

6/2/34 Chairman Rayburn opened debate on the bill with the following statement:

Section 2 (b) exempts from most of the provisions of the act small independent telephone companies whose only interstate business is through physical connection with a nonaffiliated company. The sections to which such independent companies are subjected are those providing for the regulation of rates and prohibiting unjust discrimination in interstate and foreign service.

* * *

Appendix II

Section [2]20, paragraphs (a) to (g), relating to accounts records, memoranda, and depreciation is based upon section 20 (5-8) of the Interstate Commerce Act with changes necessary to permit State commissions to prescribe the systems of accounts for the intrastate operation of carriers. Paragraphs (h) to (j) are new. Paragraph (h) authorizes the commission to classify carriers and to except the carriers of particular classes in any State from the requirements of the section where the State commission regulates accounts or depreciation for the particular class of carriers. Paragraph (i) requires the commission to consult the State commission before prescribing new systems of accounts and paragraph (j) removes any limitation upon the power of a State commission to prescribe, for the purposes of the exercise of its jurisdiction, rates of depreciation. The last three paragraphs named were placed in the bill at the request of the State commissions which feel that their task of regulating intrastate communications will be greatly facilitated by the adoption of these paragraphs.

78 Cong.Rec. 10313, 10314.

The bill passed the House by a voice vote and went to conference.

6/8/34 The Conference committee made no changes in Section 2(b), as passed by the House. The language concerning the FCC's power to except classes of carriers in the States from Federal prescriptions reverted to Section 220(h), and the language of (j) was cut back to a requirement that the Commission report to Congress on the harmonization of Federal and state powers in accounting and depreciation matters. The conforming House amendments to Sections 220(a) and (b) were also eliminated. The statement of the House managers reads in pertinent part:

Appendix II

Section 220 (j) of the Senate bill (relating to accounts and depreciation charges) authorizes the Commission to investigate and report to Congress upon the desirability of legislation authorizing the Commission to except the carriers of any particular class or classes in any State from the requirements of the section and permitting State commissions to prescribe their own percentage rates of depreciation and systems of accounts for carriers. The House amendment (sec. 220 (h)) specifically authorizes the Commission to except carriers of any particular class or classes in any State and provides (in sec. 220 (j)) that the section shall not limit the power of the State commissions to prescribe percentage rates of depreciation or to require the keeping of accounts. The substitute adopts the House provision as to exception of particular classes of carriers and a modified provision for investigation and report to Congress as to the need for defining or harmonizing Federal and State authority in respect of other matters to which the section relates.

H. Rept. No. 1918 at 47; 78 Cong. Rec. 10987.

6/9/34 The conference report (H. Rept. No. 1918, dated June 8, 1934) passed the Senate without debate and passed the House 58-40.

6/19/34 P.L. 416 (73d Cong., 2d Sess.) was signed by the President.

APPENDIX III

COMPARATIVE ANALYSIS OF SECTION 20(5) OF THE
INTERSTATE COMMERCE ACT AND SECTION 220(a), (b)
OF THE COMMUNICATIONS ACT

Interstate Commerce Act¹

(5) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

The Commission shall, as soon as practicable, prescribe for carriers subject to this Act, the classes of property for which depreciation charges may properly be included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. The carriers subject to this Act shall not

charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or

charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

* * *

Communications Act²

SEC. 220. (a) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

(b) The Commission shall, as soon as practicable, prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not,

after the Commission has prescribed the classes [classes] of property for which depreciation charges may be included,

charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or, after the Commission has prescribed percentages of depreciation,

charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

1. As amended by Section 435 of the Esch-Cummings Act (Transportation Act of 1920), 41 Stat. 493.

2. P.L. 416 (73d Cong., 2d Sess.), as approved by the President on June 19, 1934.

APPENDIX IV

**LIST OF PRINCIPAL GTE SUBSIDIARIES
PURSUANT TO RULE 28.1**

In compliance with the Court's Rule 28.1, following is a listing of the parent company and all principal subsidiaries of the GTE parties in this Court:

GTE CORPORATION

GTE Service Corporation

GTE Products of Connecticut Corporation

GTE Government Systems Corporation

GTE Communication Systems Corporation

GTE Products Corporation

GTE Laboratories Incorporated

GTE International Incorporated

GTE Telecomunicazioni S.p.A.

GTE Sylvania Licht, GmbH

GTE ATEA N.V. - S.A.

GTE Communications Services Incorporated

GTE Sprint Communications Corporation

GTE Satellite Corporation

GTE Spacenet Corporation

GTE Telenet Incorporated

GTE Telenet Holding Corporation

GTE Support Services Incorporated

GTE TeleMessenger Incorporated

GTE Valeron Corporation

Anglo-Canadian Telephone Company

British Columbia Telephone Company

Microtel Limited

Canadian Telephones and Supplies Ltd.

Dominion Directory Company Limited

Compania Dominicana de Telefonos, C. por A.

Quebec - Telephone

General Telephone Company of Alaska

General Telephone Company of California

General Telephone Company of Florida

General Telephone Company of Illinois

Appendix IV

General Telephone Company of Indiana, Inc.
General Telephone Company of Kentucky
General Telephone Company of Michigan
General Telephone Company of the Midwest
General Telephone Company of the Northwest, Inc.
 West Coast Telephone Company of California
General Telephone Company of Ohio
General Telephone Company of Pennsylvania
General Telephone Company of the Southeast
General Telephone Company of the Southwest
General Telephone Company of Wisconsin
Hawaiian Telephone Company
 The Micronesian Telecommunications Corporation
GTE Directories Corporation
GTE Data Services Incorporated
GTE Finance Corporation
 GTE Finance N.V.
 GTE Export Factoring Company B.V.
GTE Global Corporation
GTE Investment Management Corporation
GTE Mobilnet Incorporated
GTE Realty Corporation
GTE Reinsurance Company Limited
GTE Shareholder Services Incorporated
GTE Telecom Incorporated